IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.R. NO. 280 Of 2002.
Judgment reserved on:30.7.2007.
Date of decision : 09.8.2007.

Balraj Kohli and others. ……. Petitioners.

Vs.

Brij Mohan and others. …. Respondents.

Coram
The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the petitioners: Mr. G.D. Verma, Sr. Advocate with
Mr. B.C. Verma, Advocate.

For the respondents: Mr. Ramakant Sharma, Advocate.

Surinder Singh, J :

The petitioners are the defendants and have assailed the order of the District Judge, Solan, passed in C.M.Appeal No.7-S/14 of 2002, dated 3.6.2002, whereby the orders of the dismissal of the application under Order 39 Rules 1 & 2 of the Code of Civil Procedure passed by the trial court in C.M.A. No. 84/6 of 2000 dated 5.3.2002, were set aside and the said application was allowed and the defendants were restrained till the final disposal of the suit to cause any interference in the suit path.

In brief, the facts of the case are that defendants No.4 and 5 had lot of land in village Anji contiguous to Rabon and Anji road. A part of it, comprised in Khasra No.446/3/3 and 446/3/4 was sold by them earlier vide sale deed to Nathu Ram and Banwari Lal with a right to path measuring 2 Karam wide

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

to reach their houses from the said road. Out of the aforesaid land, 10 biswas comprised in Khasra No.542/446/3 was again sold to defendant No.4 by the then vendees on 30.10.1992 vide Deed No.733. Again out of the same land 10 biswas comprised in Khasra No.542/446/3/2 alongwith structure was sold to plaintiffs No.1 and 2 by defendants No.4 and 5, vide registered sale deed, which also contains a tatima. Now the Khasra number denoted by No.631/543/446/3 and the land at point `A' of Khasra No.542/446/3 annexure `F' has been purchased by the plaintiffs No.3, 4 and 5, which was sold by defendants No.4 and 5 giving the right of user of path, shown in Annexure `F' through points C.D. X and Y. The defendants No.4 and 5 further sold Khasra No.628/444/3 to defendant No.2, vide sale deed dated 21.4.1999. There has been a mention of the right of path going to the purchased land emanating from Anji-Rabon road. The path was being used by the plaintiffs and they asserted right of user.

In fact the suit land was sold by the defendants No.4 and 5 vide Sale deed Annexure 'C' wherein the reference of right to use the path as shown in tatima has been given to the said vendees. This sale deed has been assailed in the suit. Plaintiffs being earlier vendees were also given the right of user. The trial court appears to have lost sight of it, whereas the first appellate court while taking its note held, a prima-facie case in favour of the plaintiffs and rightly concluded in its discretion that there is substantial question of law, fact for determination and held the balance of convenience,

irreparable loss and comparative mischief in favour of the plaintiffs.

The learned first appellate court has rightly dealt with the matter in detail. The discretion of the appellate court cannot lightly be interfered with in revision unless it is perverse. Since, I do not find any wrong or illegality in the said order, which is in the nature of interlocutory order, which has not caused the miscarriage of justice, in any manner, as such the revision petition is dismissed.

Any observation or discussion made hereinabove, shall in no manner effect the merits of the case. The matter stands disposed of.

C.M.P. No.361/2002.

In view of the dismissal of the revision petition, this application does not survives, hence, dismissed.

August 9th, 2007.
(Pds)

(Surinder Singh)
Judge.